

O-17- 46

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AMENDING ORDINANCE NO. 7697 (“THE ZONING ORDINANCE”) TO INCLUDE A NEW ARTICLE TWENTY-TWO COVERING AIRPORT ZONING; DECLARING AN EMERGENCY; AND FOR OTHER PURPOSES.**

WHEREAS, Ark. Code Ann. § 14-363-204(d) provides that a municipality may delegate the power to promulgate, administer and enforce airport zoning regulations, and the City of North Little Rock (the “City”) has delegated that power to the North Little Rock Planning Commission with administration and enforcement by the Planning Department and Board of Adjustment & Appeals; and

WHEREAS, airport zoning is currently included as Chapter 14 in the older edition of North Little Rock Municipal Code (“NLRMC”); and

WHEREAS, since the chapter is specific to airport zoning issues and currently administered and enforced through the North Little Rock Planning Department, it should be included as a new article to the Zoning Ordinance (Ord. No. 7697).

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NORTH LITTLE ROCK, ARKANSAS:

SECTION 1: That Ordinance No. 7697 (“The Zoning Ordinance”) is hereby amended to add a new **Article Twenty-Two – Airport Zoning** pursuant to Exhibit “A” attached hereto and incorporated herein by reference.

SECTION 2: That all ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict. Specifically, Chapter 14 (Airport) of the older edition of North Little Rock Municipal Code is hereby repealed in its entirety.

SECTION 3: That the provisions of this Ordinance are hereby declared to be severable, and if any section, phrase or provision shall be declared or held invalid, such invalidity shall not affect the remainder of the sections, phrases or provisions.

SECTION 4: It is hereby found and determined that the addition of Article Twenty-two for Airport Zoning to the Zoning Ordinance of North Little Rock, Arkansas, will allow the inclusion of all pertinent zoning issues in one location, thereby improving the organization of the North Little Rock Municipal Code, and specifically its Zoning Ordinance, and being necessary for the immediate preservation of the public health, safety and welfare; THEREFORE, an emergency is hereby declared to exist, and this Ordinance shall be in full force and effect from and after its passage and approval.

PASSED:

APPROVED:

\_\_\_\_\_

\_\_\_\_\_

Mayor Joe A. Smith

SPONSOR:

Joe A. Smith  
Mayor Joe A. Smith

ATTEST:

\_\_\_\_\_  
Diane Whitbey, City Clerk

APPROVED AS TO FORM:

C. Jason Carter  
C. Jason Carter, City Attorney

PREPARED BY THE OFFICE OF THE CITY ATTORNEY/b

FILED	10:55	A.M.	_____	P.M.
By	<u>J. Carter, City Atty</u>			
DATE	<u>6/6/17</u>			
<b>Diane Whitbey, City Clerk and Collector North Little Rock, Arkansas</b>				
RECEIVED BY	<u>DA Whitbey</u>			

## **ARTICLE TWENTY-TWO AIRPORT ZONING**

### **Section 22.1 – Purpose and Authority.**

Through its approval and adoption of this Article, the North Little Rock City Council has delegated the power to promulgate, administer and enforce airport zoning regulations contained herein to the North Little Rock Planning Commission. This Article shall be known, and may be cited, as the Airport Zoning Article of the Zoning Ordinance of North Little Rock, Arkansas.

State Law reference— Airport Zoning Enabling Act, A.C.A. § 14-363-201 et seq.

### **Section 22.2 – Airport Commission.**

Operation and management of the airport for the City, its related properties and facilities has been delegated by the City to the North Little Rock Airport Commission.

State law reference— Airport commission authorized, A.C.A. § 14-359-103, 104.

Reference – Ord. 4105 adopted 08-14-72

### **Section 22.3 – Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Airport* means North Little Rock Municipal Airport.

*Airport elevation* means 544 feet above mean sea level.

*Airport manager* means the person responsible for the day-to-day operations and management of the municipal airport appointed by the municipal Airport Commission.

*Approach surface* means an imaginary plane longitudinally centered on the extended runway centerline, extending outward and upward from the end of the primary surface and at the same slope as the appropriate approach zone height limitation slope set forth in Section 2.1.2. In plan, the perimeter of the approach surface coincides with the perimeter of the approach zone.

*Approach, transitional, horizontal and conical zones.* These zones are set forth in Section 2.1.1 of this article.

*Board of adjustment* means a board consisting of five (5) members appointed by the City Council.

**Conical surface** means an imaginary surface extending outward and upward from the periphery of the horizontal surface at a slope of 20 to one for a horizontal distance of 4,000 feet.

**Director of Community Planning** means the person responsible for the day-to-day operations and management of the Department of Community Planning appointed by the Mayor.

**Municipal airport commission** means a commission consisting of five members appointed by the mayor and ratified by the city council to oversee the operations and management of the North Little Rock Municipal Airport.

**Non-conforming use** means any preexisting structure, object of natural growth, or use of land which is inconsistent with the provisions of this article or any amendment thereto.

**Non-precision instrument runway** means a runway having an existing or planned instrument approach procedure utilizing air navigation facilities with only horizontal guidance, or area type navigation equipment, for which a straight-in non-precision instrument approach procedure has been approved or planned.

**Obstruction** means a structure, growth, or other object, including a mobile object, which exceeds a limiting height set forth in Section 2.1.2.

**Person** means an individual, firm, partnership, public or private corporation, company, association, joint stock association, or governmental entity; includes a trustee, a receiver, an assignee, or a similar representative of any of them.

**Planning Commission** means a commission consisting of nine members appointed by the mayor and ratified by the city council, the general purpose of which is to prepare or have prepared a plan or plans of the municipality; to receive and make recommendations on public and private proposals for development; to prepare and administer planning regulations; to prepare and transmit to the legislative body recommended ordinance implementing plans; and to advise and counsel the city government and other public bodies.

**Precision instrument runway** means a runway having an existing instrument approach procedure utilizing an instrument landing system (ILS) or a precision approach radar (PAR). Such term also means a runway for which a precision approach system is planned and is so indicated on an approved airport layout plan or any other planning document.

**Primary surface** means an imaginary surface longitudinally centered on a runway. The primary surface extends 200 feet beyond each end of that runway. The width of the primary surface is set forth in Section 2.1.1. The elevation of any point on the

primary surface is the same as the elevation of the nearest point on the runway centerline.

**Runway** means a paved area on the airport prepared for the landing and takeoff of aircraft along its length.

**Structure** means an object, including a mobile object, constructed or installed by man, including, but without limitation, buildings, towers, cranes, smokestacks, earth formations, and overhead transmission lines.

**Transitional surfaces** means imaginary surfaces extending outward at 90 degree angles to the runway centerline, and the extended runway centerline at a slope of seven feet horizontally for each foot vertically from the sides of the primary, and approach surfaces to where they intersect the horizontal and conical surfaces.

**Tree** means an object of natural growth.

**Utility runway** means a runway that is constructed for and intended to be used by propeller driven aircraft of 12,500 pounds maximum gross weight and less.

**Visual runway** means a runway intended solely for the operation of aircraft using visual approach procedures.

#### **Section 22.4 – Zones Created.**

In order to carry out the provisions of this article, there are hereby created and established certain zones which include all of the land lying beneath the approach surfaces, transitional surfaces, horizontal surface, and conical surface as they apply to the municipal airport. Such zones are shown on the North Little Rock Municipal Airport Height Zoning Ordinance Plan prepared for the municipal airport commission.

An area located in more than one of the following zones is considered to be only in the zone with the more restrictive height limitation. The various zones are hereby established and defined as follows:

- A. **Utility runway, non-precision instrument approach zone (runways 17 and 35):** The inner edge of this approach zone coincides with the width of the primary surface and is 500 feet wide. The approach zone expands outward uniformly to a width of 2,000 feet at a horizontal distance 5,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.
- B. **Runway larger-than-utility, non-precision instrument approach zone (runway 5):** The inner edge of this approach zone coincides with the width of the primary surface and is 1,000 feet wide. The approach zone expands outward uniformly to a width of 4,000 feet at a horizontal distance of

10,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.

- C. ***Precision instrument runway approach zone (runway 23):*** The inner edge of this approach zone coincides with the width of the primary surface and is 1,000 feet wide. The approach zone expands outward uniformly to a width of 16,000 feet at a horizontal distance of 50,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.
- D. ***Transitional zones:*** Areas beneath the transitional surfaces.
- E. ***Horizontal zone:*** The horizontal zone is established by swinging arcs of 5,000 feet radii for the runways designated as utility (runways 17 and 35), and 10,000 feet radii for the runways designated as precision instrument (runway 23) and non-precision instrument (runway 5), measured from the center of each end of the primary surface of each runway, and connecting the adjacent arcs by drawing a line tangent to these arcs. The horizontal zone does not include the approach and transitional zones.
- F. ***Conical zone:*** The area that commences at the periphery of the horizontal zone and extends outward for a horizontal distance of 4,000 feet.

#### **Section 22.5 – Airport zone height limitations.**

Except as otherwise provided in this article, no structure shall be erected, altered or maintained, and no tree shall be allowed to grow, in any zone created by this article to a height in excess of the applicable height limitation established in this article for each of the zones as follows:

- A. ***Utility runway, non-precision instrument approach zone:*** Slope 20 feet outward for each foot upward, beginning at the end of and at the same elevation as the primary surface, and extending to a horizontal distance of 5,000 feet along the extended runway centerline.
- B. ***Runway larger-than-utility, non-precision instrument approach zone:*** Slope 34 feet outward for each foot upward, beginning at the end of and at the same elevation as the primary surface, and extending to a horizontal distance of 10,000 feet along the extended runway centerline.
- C. ***Precision instrument runway approach zone:*** Slopes 50 feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 10,000 feet along the extended runway centerline; thence slopes upward 40 feet horizontally for each foot vertically to an additional horizontal distance of 40,000 feet along the extended runway centerline.

- D. ***Transitional zones:*** Slope seven feet outward for each foot upward, beginning at the sides of and at the same elevation as the primary surface and the approach surface, and extending to a height of 694 feet above mean sea level. In addition to the foregoing, there are established height limits sloping seven feet outward for each foot upward, beginning at the sides of and at the same elevation as the approach surface, and extending to where they intersect the conical surface.
- E. ***Horizontal zone:*** One hundred fifty feet above the airport elevation, i.e., at a height of 694 feet above mean sea level.
- F. ***Conical zone:*** Slopes 20 feet outward for each foot upward, beginning at the periphery of the horizontal zone and at 150 feet above the airport elevation, and extending to a height of 350 feet above the airport elevation, i.e., to a height of 894 feet above mean sea level.
- G. ***Excepted height limitations:*** Nothing in this article shall be construed as prohibiting the construction or maintenance of any structure, or growth of any tree, to a height up to 50 feet above the surface of the land.

#### **Section 22.6 – Land use restrictions.**

Notwithstanding any other provisions of this article, no use may be made of land or water within any zone established by this article in such a manner as to create electrical interference with navigational signals or radio communication between the airport and aircraft, make it difficult for pilots to distinguish between airport lights and other lights, result in glare in the eyes of pilots using the airport, impair visibility in the vicinity of the airport, create bird strike hazards, or otherwise in any way endanger or interfere with the landing, takeoff or maneuvering of aircraft intending to use the airport.

#### **Section 22.7 – Nonconforming uses.**

- A. ***Regulations not retroactive.*** The regulations prescribed by this article shall not be construed to require the removal, lowering, or other change or alteration of any structure or tree not conforming to the regulations as of September 27, 1993, or otherwise interfere with the continuance of nonconforming use. Nothing contained in this article shall require any change in the construction, alteration or intended use of any structure or alteration which was begun prior to the effective date of this article and is diligently prosecuted.
- B. ***Marking and lighting.*** Notwithstanding the preceding provisions of this section, the owner of any existing nonconforming structure or tree is hereby required to permit the installation, operation and maintenance thereon of such markers and lights as shall be deemed necessary by the

municipal airport commission to indicate to the operators of aircraft in the vicinity of the airport the presence of such airport obstruction. Such markers and lights shall be installed, operated and maintained at the expense of the city.

- C. *Lowering or removal of nonconforming uses.* In order to eliminate or mitigate existing hazards to landing and taking-off at the airport, to improve and make safer the airport, and to permit public use of any obstructed navigable airspace needed for such use, the municipal airport commission may acquire, by purchase, grant or condemnation, such estate or interest in any structure or tree of nonconforming use for which a permit has been granted in accordance with Section 2.2.3(C) as is necessary to conform to the applicable height limitation prescribed in this article. In cases of imminent danger to the health, safety and general welfare of the public, the municipal airport commission shall take such immediate steps as are necessary to remove such danger, and a hearing shall thereafter be held to determine what compensation, if any, should be made to the owner of the structure or tree causing such danger.

State law reference— Lawful nonconforming uses, A.C.A. § 14-363-205; permits for change or repair of nonconforming uses, A.C.A. § 14-363-206.

### **Section 22.8 – Permits.**

- A. *Future uses.* Except as specifically provided in subsections (1) and (2) of this subsection (a), no material change shall be made in the use of land, no structure shall be erected or otherwise established, and no tree shall be planted in any zone hereby created unless a permit therefor shall have been applied for and granted by the Planning Department. Each application for a permit shall indicate the purpose for which the permit is desired, with sufficient particularity for it to be determined whether the resulting use, structure or tree would conform to the regulations prescribed in this article. If such determination is in the affirmative, the permit shall be granted. No permit for a use inconsistent with the provisions of this article shall be granted unless a variance has been approved in accordance with subsection (f) of this section. (1) In the area lying within the limits of the horizontal zone and conical zone, no permit shall be required for any tree or structure less than 75 feet of vertical height above the ground, except when, because of terrain, land contour, or topographic features, such tree or structure would extend above the height limit prescribed for such zones. (2) In areas lying within the limits of the approach zone, but at a horizontal distance of not less than 4,200 feet from each end of the runway, no permit shall be required for any tree or structure less than 75 feet of vertical height above the ground, except when such tree or structure would extend above the height limit prescribed for such approach zones.



Nothing contained in any of the foregoing exceptions shall be construed as permitting or intending to permit any construction or alteration of any structure, or growth of any tree, in excess of any of the height limits established by this article except as set forth in Section 2.1.2.

- B. *Existing uses.* No permit shall be granted that would allow the establishment or creation of an obstruction, or that would allow a nonconforming use, structure or tree to become a greater hazard to air navigation than it was on September 27, 1993 or on the effective date of any amendments to this article or than it is when the application for such a permit for existing uses shall be granted.
- C. *Continuance of nonconforming uses.* The owner of any structure or tree which is nonconforming to the regulations of this article on September 27, 1993 shall be granted a permit authorizing continuance of such nonconforming use, upon application therefor made by him; provided that, if such application is not made within 90 days of such date, the Department of Community Planning shall by appropriate action compel the owner of the nonconforming structure or tree, at his own expense, to lower or remove such object to the extent necessary to conform to this article.
- D. *Change and repair of nonconforming uses.* Before any existing nonconforming structure or tree for which a permit has been issued in accordance with subsection (c) of this section may be altered or repaired, rebuilt, allowed to grow higher or replanted, a permit must be secured from the Department of Community Planning authorizing such change or repair. No such permit shall be granted that would permit the structure or tree in question to be made higher or become a greater hazard to air navigation than it was when the permit for its continuance was granted.
- E. *Nonconforming uses abandoned or destroyed.* Whenever the Department of Community Planning determines that a nonconforming tree or structure has been abandoned or more than 50 percent torn down, physically deteriorated or decayed, no permit shall be granted that would allow such structure or tree to exceed the applicable height limit or otherwise deviate from the zoning regulations. In all such cases of 50 percent destruction, deterioration or decay, whether application is made for a permit for repair or not, the Department of Community Planning shall, by appropriate action, compel the owner of the nonconforming tree or structure, at his own expense, to lower or remove such object to the extent necessary to conform to the applicable height limit.
- F. *Variances.* Any person desiring to erect or increase the height of any structure, or permit the growth of any tree, or use property, not in accordance with the regulations prescribed in this article, may apply to the board of adjustment for a variance from such regulations. The application

for variance shall be accompanied by a determination from the Federal Aviation Administration as to the effect of the proposal on the operation of air navigation facilities and the safe, efficient use of navigable airspace. Such variances shall be allowed where it is duly found that a literal application or enforcement of the regulations will result in unnecessary hardship, and the relief granted will not be contrary to the public interest, will not create a hazard to air navigation, will do substantial justice, and will be in accordance with the spirit of this article. Additionally, no application for variance to the requirements of this article may be considered by the Board of Zoning Adjustment (see Article Nineteen of the Zoning Ordinance) unless a copy of the application has been furnished to the airport manager and/or municipal airport commission for advice as to the aeronautical effects of the variance. If the airport manager and/or municipal airport commission does not respond to the application within 15 days after receipt, the Board of Zoning Adjustment may act on its own to grant or deny such application.

- G. *Obstruction marking and lighting.* Any permit or variance granted may, if such action is deemed advisable to effectuate the purpose of this article and be reasonable in the circumstances, be so conditioned as to require the owner of the structure or tree in question to install, operate or maintain, at the owner's expense, such markings and lights as may be necessary. If deemed proper by the board of adjustment, this condition may be modified to require the owner to permit the city, at its own expense, to install, operate and maintain the necessary markings and lights.
  
- H. *Notice of hearing of applications for permits and variances; introduction of evidence.* In all cases of applications for permits and variances as provided for in this section, a public notice shall be published, in the manner prescribed by law for publication of legal notices, of a public hearing upon the application in question; a public hearing shall be held at which any person having an interest in the proceedings shall have an opportunity to offer evidence for or in opposition to the application in question; and written findings of fact and conclusions of law shall be made by the municipal planning commission, based upon the evidence offered at the public hearing.

State law reference — Permits and variances, A.C.A. §14-363-206.

### **Section 22.9 – Enforcement.**

It shall be the duty of the Director of Community Planning to administer and enforce the regulations prescribed in this article. Applications for permits and variances shall be made to the Department of Community Planning upon a form published for that purpose. Applications required by this article to be submitted to the director of community planning shall be promptly considered and granted or denied. Application for action by the Board of Zoning Adjustment shall be forthwith submitted by the

Director of Community Planning. A copy of each application for permits and variances and each permit and variance granted shall be furnished to the airport manager and/or Municipal Airport Commission by the Director of Community Planning.

**Section 22.10 – Board of Zoning Adjustment.**

- A. A Board of Zoning Adjustment has been created pursuant to Article Nineteen hereof with the power to consider appeals and variances of the enforcement and application of the Zoning Ordinance (including this Article Twenty-Two.
- B. The Board of Adjustment shall make written findings of fact and conclusions of law giving the facts upon which it acted and its legal conclusions from such facts in reversing, affirming or modifying any order, requirement, decision or determination which comes before it under the provisions of this article.
- C. The concurring vote of a majority of the members of the Board of Adjustment shall be sufficient to reverse any order, requirement, decision or determination of the director of community planning, or decide in favor of the applicant, on any matter which it is required to pass under this article, or to effect variation to this article.

State law reference— Authority for board of adjustment, A.C.A. § 14-363-205, et seq.

**Section 22.11 – Violations; penalties.**

Each violation of this article or of any regulation, order or ruling promulgated under this article shall constitute a misdemeanor. In addition, the North Little Rock Planning Commission may institute, in any court of competent jurisdiction, an appropriate action or proceeding to prevent, restrain, correct or abate any violation of the regulations of this article, or any order or ruling made in connection with its administration or enforcement, and the court shall adjudge then to the plaintiff such relief, by way of injunction (which may be mandatory) or otherwise as may be proper under all the facts and circumstances of the case, in order to fully carry out and effectuate the purposes of this article and the orders and rulings made pursuant to the authority herein given.

State law reference — Penalties and injunctive relief authorized, A.C.A. § 14-363-203.

**Section 22.12 – Conflicting regulations.**

Where there exists a conflict between any of the regulations or limitations prescribed in this article and any other regulation applicable to the same area, whether the conflict be with respect to the height of structures or trees and the use of land, or any other matter, the more stringent limitation or requirement shall govern and prevail.